

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
IN RE:

Chapter 7
Case # 08-14106(REG)

SYLVIA NUSR,

Debtor.
----- X

HELD AT: Law Offices of Linda M. Tirelli
202 Mamaroneck Avenue
White Plains, New York 10601
October 6, 2009
1:39 p.m.

Examination before Trial of the
REPRESENTATIVE OF JP MORGAN CHASE BANK, NA,
by CHARLES HERNDON, pursuant to Court Order,
held at the above time and place before a
Notary Public of the State of New York.

J & L REPORTING SERVICE
of Westchester, Inc.
200 East Post Road
White Plains, New York 10601
(914) 682-1888
Lisa Dobbo, Reporter

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IT IS HEREBY STIPULATED AND
AGREED, by and between the attorneys for the
respective parties herein, that the sealing
and filing of the within deposition be
waived; that such deposition may be signed
and sworn to before any officer authorized
to administer an oath, with the same force
and effect as if signed and sworn to before
the officer before whom said deposition is
taken.

IT IS FURTHER STIPULATED AND
AGREED, that all objections, except as to
form, are reserved to the time of trial.

COPY

A P P E A R A N C E S:

LAW OFFICES OF LINDA M. TIRELLI
Attorney for the Debtor
Office & Post Office Address
202 Mamaroneck Avenue
3rd Floor
White Plains, New York 10601
BY: LINDA M. TIRELLI, ESQUIRE

TEITELBAUM & BASKIN, LLP
Attorneys for
JP Morgan Chase Bank, NA
Office & Post Office Address
3 Barker Avenue, 3rd Floor
White Plains, New York 10601
BY: JAY TEITELBAUM, ESQUIRE

OFFICE OF US TRUSTEE
33 Whitehall Street, Floor 21
New York, New York 10004
BY: GREG ZIPES, US TRUSTEE

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1 C. HERNDON
2 CHARLES HERNDON, residing at
3 C/O 7301 Baymeadows Way,
4 Jacksonville, Florida 32256,
5 having been duly sworn by
6 Notary Public, Lisa Dobbo
7 testified as follows:
8 EXAMINATION BY MS. TIRELLI:
9 Q. Good afternoon and welcome.
10 State your name for the record,
11 please and spell it.
12 A. Charles, C-H-A-R-L-E-S,
13 Herndon, H-E-R-N-D-O-N.
14 Q. What is your business address,
15 Mr. Herndon?
16 A. 7301 Baymeadows, one word, Way,
17 Jacksonville, Florida 32256.
18 Q. What business is at that
19 address?
20 A. JP Morgan Chase.
21 Q. How long have you worked at JP
22 Morgan Chase?
23 A. I've worked at Chase since they
24 acquired Washington Mutual, September 2008.
25 Q. What's your title there?

5

1 C. HERNDON

2 A. Operations unit manager.

3 Q. Is this a servicers division of
JP Morgan Chase?

4 A. Yes, ma'am.

5 Q. What exactly is your division
6 or department that you're working for?

7 A. I work for risk research.

8 Q. What does that entail exactly?

9 A. Litigation support.

10 Q. Have you ever been deposed
11 before?

12 A. Yes, ma'am.

13 Q. How many times?

14 A. Approximately seventy-five.

15 Q. In what capacity?

16 A. Through work.

17 Q. Of the same as what you're
18 doing now, in other words?

19 MR. TEITELBAUM: Objection.

20 A. Yes, ma'am.

21 Q. Were these seventy-five
22 different cases or did seventy-five
23 depositions?

24 A. Primarily -- there may have

6

1 C. HERNDON

2 been one or two cases I was deposed more
3 than once but approximately seventy-five
4 different cases.

5 Q. Could you list them?

6 A. No, ma'am.

7 Q. You're familiar with the
8 process of deposition and you understand you
9 keep your voice up and the court reporter
10 cannot take nods and shakes of the head, you
11 understand that; right?

12 A. Yes, ma'am.

13 Q. If you ask me to repeat
14 something I want to make should you
15 understand the question. I do not want you
16 to guess. I don't want you to assume
17 anything. I want you to answer from your
18 own personal knowledge; do you understand?

19 A. Yes, ma'am.

20 Q. For the record, I'm Linda
Tirelli and I represent the debtor, Sylvia
22 Nuer. She's not present today. She may be
23 coming today.

24 Also present for the record is Jay
25 Teitlebaum who represents Chase Bank and

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1 C. HERNDON

2 Greg Zipes, US Trustee.

3 I want to give you copy of the Notice
4 of Deposition and request for production of
5 documents that was served in this case.

6 MR. TEITELBAUM: Okay.

7 MS. TIRELLI: If we can get
8 that marked as an exhibit.

9 (Whereupon, Debtor's Exhibit 1,
10 Notice of Deposition, was marked for
11 Identification.)

12 Q. Mr. Herndon, you now have in
13 front of you what's marked as Debtor's 1
14 which is the Notice of Deposition and
15 request for production of documents.

16 Have you seen this document prior to
17 today?

18 A. Looks similar to a document
19 I've seen. I couldn't attest to whether
20 this is a document or not.

21 Q. Have you reviewed this prior to
22 today?

23 A. Not -- no, ma'am.

24 Q. But you're here to testify to
25 the matters that were requested to be

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1 C. HERNDON

2 testified before in that document today;
3 correct?

4 MR. TEITELBAUM: Objection.

5 Based on discussions, the scope of
6 this -- based on discussions with the
7 office of trustees office and you,
8 Mr. Herndon, and your notice was here
9 to testify with respect to the issue
10 of the standing in connection with
11 the motion from remove from the stay.
12 That's the motion he was presented
13 with today.

14 We advised you there was no one
15 witness who can testify to every
16 aspect of your deposition.

17 MS. TIRELLI: I do agree it may
18 take more than one witness to get
19 everything answered.

20 Q. My question is merely, have you
21 ever seen this document before, Mr. Herndon?

22 MR. TEITELBAUM: No, your
23 question was whether he was here to
24 testify to issues in your Notice of
25 Deposition.

C. HERNDON

whether there's improprieties whether on the debtor's side or creditor's side. We sometimes file papers whether or not we think it's appropriate or not, so with that, I listened to the testimony and I just have a few questions.

Let me just ask you, it sounded as I listened here you have no personal knowledge about the motion to vacate that was filed in this case and the documents that were filed in this case by JP Morgan Chase; is that accurate?

A. I have no personal knowledge.

Q. But you're produced today in order to tell us about the chain of title among other things in this case; is that your understanding why you're here today?

A. Yes.

Q. Presumably you can tell that to us today; correct, if I ask you some questions about it?

A. I can do my best.

Q. That's all we can ask. I might be repeating a little bit what we have heard

C. HERNDON

before but I'll move on quickly, so let's start we had a note and mortgage in this case; correct?

A. Yes, sir.

Q. That note and mortgage was held, if I understood your testimony correctly, by Long Beach Mortgage Company initially?

A. They're the originator, yes, sir.

Q. Then you testified, I believe it went to Long Beach Security Corporation; correct?

A. Long Beach Securities.

Q. Then from there it went to Deutsches Bank National Trust, it just went from one, two, three, is that your understanding what happened here in terms of ownership?

A. That's my understanding.

Q. Have you personally seen the documents that would show this chain of title, I call it chain of title but these three owners of the note and mortgage?

C. HERNDON

A. I seen what I believe to be documents, yes, sir.

Q. Let me ask you, you're not going to have personal knowledge by way of these motions but I'm going to ask you if you seen a document attached to JP Morgan Chase documents that was filed in this case, I have a binder and I'm going to direct your attention what I marked as UST Exhibit 15.

(Handed)

Q. I actually put a yellow sticky on it.

MR. TEITLEBAUM: You want to mark this?

MR. ZIPES: I'll mark it as UST-1.

Look at it and I'll represent to you, Jay, this is the initial motion for termination of automatic stay filed by JP Morgan Chase National Association dated --

MR. TEITLEBAUM: The sticky is on one page of that.

MR. ZIPES: The entire

C. HERNDON

document, but the motion is dated November 14th, 2008 and it's signed by Maron Buczkowski of Stephen J. Baum, PC law firm and it's a motion to terminate.

I'll represent, Jay, that I pulled this off the document and there's a series attached as Exhibit A to this motion, and just flip about --

MR. TEITLEBAUM: We got it.

Q. Exhibit A, these are the documents represented by JP Morgan Chase to show the chain of title in this case.

If you turn to the first page of Exhibit A there's a fixed adjustable rate note. Do you see that on top there?

A. Yes, sir.

Q. This shows on -- it's dated January 6th, 2006?

A. Yes, sir.

Q. And this shows the borrowers promise to pay a hundred four thousand dollars to Long Beach Mortgage Company; do

C. HERNDON

1 you see that?

2 A. Yes, sir.

3 Q. Would this be a document you

4 looked at to establish that Long Beach

5 Mortgage Company is the initial owner of

6 this document, of the note and mortgage?

7 A. Well, I did look at this

8 document, yes, sir.

9 Q. Is this how you formed your

10 basis that JP Morgan -- that Long Beach

11 Mortgage Company was the initial owner of

12 the mortgage company and note?

13 A. They're the initial lender,

14 yes, sir.

15 Q. Is there any other documents

16 you would have referred to?

17 A. Well, the mortgage, the actual

18 mortgage.

19 Q. If you turn a little bit

20 further, I think it's there.

21 A. Yes, sir, it's further in

22 there.

23 Q. But these would have been the

24 two documents you would have looked at to

25

C. HERNDON

1 establish that, that Long Beach Mortgage

2 Company was the initial owner?

3 A. Yes, sir.

4 Q. You also testified that Long

5 Beach Securities Corporation was the next

6 owner of this.

7 As you flip through Exhibit A, I

8 couldn't see anything at least in Exhibit A,

9 it's not to say you haven't reviewed

10 something. I couldn't see anything in

11 Exhibit A that shows ownership to Long Beach

12 Security; is that correct?

13 A. I don't know.

14 Q. But, there is -- did you review

15 a note and mortgage similar to this that

16 shows it went to Long Beach?

17 A. Not in those.

18 Q. What did you review?

19 A. I believe it was entitled a

20 mortgage loan purchase agreement. I think

21 that was the title.

22 Q. Again, you're not personally

23 familiar with what's been filed but do you

24 know -- you're not specifically familiar

25

C. HERNDON

1 with everything but do you happen to know if

2 the mortgage loan document that you're

3 referring to now was attached as a document

4 in the bankruptcy proceeding by JP Morgan

5 Chase at anytime?

6 MR. TEITLEBAUM: Just give me a

7 second.

8 Off the record.

9 (Whereupon, a discussion was

10 held off the record.)

11 MR. ZIPES: I just ask that you

12 review your files and see if it's

13 been filed in some way with the

14 court. I can represent to you that I

15 didn't see it but that's not to say

16 --

17 MR. TEITLEBAUM: My

18 recollection is that it is not part

19 of the filing that was made by the

20 Baum office in connection with the

21 MFO. What I'm trying to recollect

22 and give me half a second -- I don't

23 believe it was attached to any of the

24 pleadings filed thus far in the case.

25

C. HERNDON

1 MR. ZIPES: I would ask you

2 produce that document and it may have

3 been produced already.

4 MR. TEITLEBAUM: Well, it was

5 produced to Ms. Tirelli. I'm happy

6 to send you copy of it.

7 MR. ZIPES: Would you mind

8 because I don't have it. Would you

9 mind giving it to the witness and

10 just having him see that and testify

11 that's what he reviewed.

12 MR. TEITLEBAUM: Sure. If

13 you'd like, do you want to make copy

14 of it so we can mark it as an

15 exhibit?

16 MS. TIRELLI: Sure.

17 MR. ZIPES: Off the record.

18 (Whereupon, a discussion was

19 held off the record.)

20 MR. ZIPES: Let's move on while

21 we're waiting for copy to the third

22 owner of this property which is

23 Deutsches Bank.

24 Q. Can you, again I'll refer you

25

C. HERNDON

A. Yes, sir.

Q. Have you seen any proof that there was a recording of the Long Beach Securities Corp from or Long Beach Mortgage Trust 2006-2 in any of your review of the documents?

MR. TEITLEBAUM: Excuse me, proof of recording of the transfer?

MR. ZIPES: The transfers.

A. I mean, there's -- the documents, Exhibit 2 and Debtor's Exhibit 2 and UST Exhibit 2, I don't know whether these documents need to be recorded.

Q. That wasn't my question.

I'm asking if you seen any documents evidencing any recordings of these assignments.

A. Not that I can recall.

Q. So, let me turn you back to UST Exhibit 1 for a moment and this is the motion to vacate the stay which you don't have a lot of personal knowledge about but to make it a little easier I put a little sticky, that's my little sticky, this was

C. HERNDON

filed as part of the motion to vacate the stay and this is the assignment of mortgage; do you see that?

A. Yes, sir.

Q. So, this assignment of mortgage -- what is an assignment of mortgage in your understanding?

A. It is assigning a mortgage from one -- from one entity to another or one person to another.

Q. Do you see that line assignor JP Morgan Chase Bank National Association?

A. Yes, sir.

Q. And the assignee is Deutsches Bank National Trust Company as trustee for Long Beach Mortgage Trust 2006-2; do you see that?

A. Yes, sir.

Q. What is your understanding of what's being assigned here?

A. My understanding it's assigning the mortgage.

Q. So, how does that -- I'm just trying to understand in chain of title, is

C. HERNDON

there another piece of this chain of title of who owned the mortgage?

A. Not that I'm aware of, no, sir.

Q. Can you explain this document?

A. No, sir. This was prepared at the request of counsel -- of foreclosure or bankruptcy counsel, default counsel and I was not involved in creation of this document.

Q. It appears to be assignment of the mortgage, so correct?

A. That's what it's titled, yes, sir.

Q. Let me turn to the servicers of the note and mortgage.

We went through chain of title here, the servicers. I think you testified before that WaMu was a servicer of the note and mortgage and JP Morgan sort of took over the servicing, that's your understanding of JP Morgan Chase's involvement in the case

A. Yes, sir.

Q. Is that the totality of the servicers with respect to this note and

C. HERNDON

mortgage throughout the life of it?

A. Well, again, it was originated by Long Beach Mortgage Company, Washington Mutual became servicer and then JP Morgan Chase, yes.

Q. So, when did WaMu become the servicer of the mortgage?

A. In January of 2006.

Q. What document did you review to reach that conclusion?

A. There's a reference in here specifically indicating -- I apologize.

Q. That's fine.

MR. TEITLEBAUM: Want to help him move it along?

MR. ZIPES: I'm just asking the witness what he reviewed.

MR. TEITLEBAUM: Do you want to make copies of these two letters?

MR. ZIPES: We'll mark those as UST Exhibit 3. Do we want to interrupt the flow?

MR. TEITLEBAUM: It directly answers your question. Can we get